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HOUSE BILL 1322

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MURRAY RYAN

AN ACT

RELATING TO LENDING INSTITUTIONS; EXPANDING THE AUTHORITY OF
LENDING INSTITUTIONS TO SELL CERTAIN INSURANCE AND ANNUITIES;
REPEALING AND ENACTING A CERTAIN SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 59A-12-10 NMSA 1978 (being Laws 1984,
Chapter 127, Section 211, as amended) is repealed and a new
Section 59A-12-10 NMSA 1978 is enacted to read:

"59A-12-10. [NEW MATERIAL] LICENSING OF LENDING
INSTITUTION--DEFINITIONS AND EXCEPTIONS.--

A. As used in this section:

(1) "lending institution" means:

- (a) a bank holding company, as defined in
12 USCA Section 1841;
- (b) a bank, savings bank, savings and

1 loan association, trust company that accepts deposits and makes
2 loans or any depository institution as defined in 12 USCA
3 Section 1813(c)(1) that accepts deposits and makes loans in New
4 Mexico;

5 (c) a credit union organized under
6 federal or state law;

7 (d) a subsidiary of the entities
8 described in Subparagraphs (a) through (c) of this paragraph;
9 and

10 (e) a person whose primary business is
11 accepting deposits and making loans in New Mexico. To the
12 extent that an affiliate of a lending institution that is not a
13 subsidiary of the lending institution conducts insurance sales
14 activities on behalf of or on the premises of the lending
15 institution, the affiliate is a lending institution for the
16 purposes of those activities. "Lending institution" does not
17 include an insurance company;

18 (2) "holding company", "subsidiary" and
19 "affiliate" mean those terms as defined in regulations adopted
20 by the superintendent, except "bank holding company" means that
21 term as defined in Section 2 of the federal Bank Holding Company
22 Act of 1956; and

23 (3) "public utility" means a private employer
24 subject to the jurisdiction of the New Mexico public utility
25 commission or the state corporation commission, or its successor

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1 entity, that is engaged in the business of providing
2 telecommunications, electric, gas, water or steam heat services
3 to the public.

4 B. A lending institution may be licensed to sell:

5 (1) any insurance except title insurance in
6 accordance with the Insurance Code and to the extent authorized
7 by federal and state lending institution regulators; and

8 (2) annuities to the extent authorized by law
9 and federal and state lending institution regulators, but
10 nothing in this paragraph shall affect the rights and
11 obligations of nationally chartered lending institutions.

12 C. A public utility or its holding company,
13 subsidiary or affiliate shall not be licensed to sell insurance
14 or act as a broker for insurance in New Mexico.

15 D. As used in Subsections E through Y of this
16 section, "insurance" means all products defined or regulated as
17 insurance under the Insurance Code except:

18 (1) credit life, credit accident and health,
19 credit involuntary unemployment, credit casualty and credit
20 property insurance;

21 (2) insurance placed by a lending institution
22 on the collateral pledged as security for a loan when the debtor
23 breaches the contractual obligation to provide that insurance;
24 and

25 (3) private mortgage insurance and financial

1 guarantee insurance.

2 E. A lending institution shall not require as a
3 condition precedent to the extension of credit, or any
4 subsequent renewal thereof, or the procurement of other bank
5 services that the customer purchase insurance through a
6 particular insurer, agent or broker.

7 F. A lending institution shall not extend credit,
8 lease or sell property or furnish any other service or fix or
9 vary the consideration for any of the foregoing on the condition
10 or requirement that the customer obtain insurance from that
11 lending institution or from a particular insurer, agent or
12 broker.

13 G. A lending institution shall not impose a
14 requirement on an insurance agent or broker who is not
15 associated with the lending institution that is not imposed on
16 an insurance agent or broker who is associated with that
17 institution or, unless otherwise authorized by applicable
18 federal or state law, require a debtor, insurer, broker or agent
19 to pay a separate charge in connection with the handling of
20 insurance that is required under a contract.

21 H. A lending institution that sells insurance on its
22 premises shall:

23 (1) conspicuously post a notice that is clearly
24 visible to anyone who may purchase insurance that insurance is
25 not a deposit account insured by a federal deposit insuring

1 agency;

2 (2) orally inform a prospective purchaser of
3 insurance that insurance is not a deposit account insured by a
4 federal deposit insuring agency; and

5 (3) provide a written disclosure to the
6 customer containing the following statements before the sale of
7 insurance is complete:

8 (a) insurance is not a lending
9 institution deposit account and is not insured by its federal
10 deposit insuring agency;

11 (b) insurance is not an obligation of or
12 guaranteed by the lending institution;

13 (c) the customer is not required to
14 obtain insurance from a particular lending institution, agent or
15 broker; and

16 (d) where applicable, insurance involves
17 investment risk, including potential loss of principal.

18 I. The promotion and sale of insurance by a lending
19 institution shall be effectuated in such a manner so as to avoid
20 confusion between federally insured deposit products offered by
21 a lending institution and the nonfederally insured insurance
22 sold. Insurance advertisements and other promotional material
23 shall be accurate and not misleading or deceptive. Insurance
24 advertising and other promotional materials regarding insurance
25 shall include disclosures that contain language that is the same

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1 or substantially similar to the following:

2 (1) insurance is not a lending institution
3 deposit and is not insured by its federal deposit insuring
4 agency;

5 (2) insurance is not an obligation of or
6 guaranteed by the lending institution; and

7 (3) where applicable, insurance involves
8 investment risk, including potential loss of principal.

9 J. Insurance operations may be conducted by the
10 lending institution, its holding company, an affiliate or
11 subsidiary of either or through a separate corporate entity or
12 partnership.

13 K. A lending institution shall not use nonpublic
14 information for the purpose of selling or soliciting the
15 purchase of insurance or provide nonpublic customer information
16 to a third party for the purpose of another's sale or
17 solicitation of the purchase of insurance without written
18 authorization from the customer. As used in this subsection,
19 "nonpublic customer information" means information regarding a
20 person that has been derived from a record of a financial
21 institution. "Nonpublic customer information" does not include
22 customer names and addresses and telephone numbers or
23 information about an individual that could be obtained from an
24 unaffiliated credit bureau that is subject to the Fair Credit
25 Reporting Act by a third party that is not entering into a

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1 credit relationship with the individual but has a legitimate
2 need for the information in connection with a business
3 transaction with the individual, except that "nonpublic customer
4 information" includes information concerning insurance premiums,
5 the terms and conditions of insurance coverage, insurance
6 expirations, insurance claims and insurance history of an
7 individual.

8 L. A lending institution selling insurance in New
9 Mexico shall establish at least one in-state lending office.

10 M Records relating to the insurance transactions of
11 a lending institution, including files relating to and
12 reflecting customer complaints, shall be kept separate and apart
13 from all records relating to the banking transactions of the
14 lending institution. Records pertaining to insurance activities
15 of the lending institution or copies of those records shall be
16 kept in the principal in-state office in the state of the
17 financial institution and shall be subject to the inspection and
18 audit by the insurance department. If the department determines
19 to inspect and audit the records relating to the insurance
20 activities of a lending institution, that institution shall make
21 available to the department, at a location of the lending
22 institution in the state, knowledgeable personnel to assist in
23 the interpretation of the lending institution's records.

24 N. A lending institution, or officer, director or
25 employee acting on behalf of the institution, who qualifies for

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1 issuance of an agent or broker's license pursuant to the
2 Insurance Code may be issued an agent or broker license
3 authorizing the sale of insurance.

4 0. A lending institution shall not pay a commission
5 or other valuable consideration to a person for services of an
6 insurance agent unless the person performing the service held a
7 valid insurance agent license for the class of insurance for
8 which the service was rendered or performed at the time the
9 service was performed. No person, other than a person properly
10 licensed in accordance with the Insurance Code, shall accept any
11 commission or valuable consideration for those services.

12 P. A lending institution shall not offer an
13 inducement to a customer to purchase insurance from the
14 institution other than as plainly expressed in the insurance
15 policy. Investment programs, memberships or other programs
16 designed or represented to waive, reduce, pay, produce or
17 provide funds to pay all or part of the cost on insurance are an
18 illegal inducement.

19 Q. A lending institution may not in the same
20 transaction solicit the purchase of insurance from a customer
21 who has applied for a loan from the institution before the time
22 the customer has received a written commitment from the lending
23 institution with respect to that loan, or, in the event that no
24 written commitment has been or will be issued in connection with
25 the loan, a lending institution shall not solicit the purchase

1 of insurance before the time the customer receives notification
2 of approval of the loan by the lending institution, and the
3 institution creates a written record of the loan approval.

4 R. Solicitation for the purchase of insurance by the
5 lending institution shall be conducted only by persons whose
6 responsibilities do not include loan transactions or other
7 transactions involving the extension of credit, except that at a
8 lending institution location having three or fewer persons with
9 lending authority, solicitation for the sale of insurance may be
10 conducted by a person with responsibilities for loan
11 transactions involving the extension of credit so long as the
12 person primarily responsible for making the specific loan or
13 extension of credit is not the same person engaged in the
14 solicitation for the purchase or sale of insurance for that same
15 transaction.

16 S. If insurance is required as a condition of
17 obtaining a loan, the credit and insurance transactions shall be
18 completed independently and through separate documents.

19 T. A loan for premiums on required insurance shall
20 not be included in the primary credit without the written
21 consent of the customer.

22 U. A person who engages in loan transactions at any
23 office of, or on behalf of, a lending institution or any other
24 agent, employee, director or officer of the institution may
25 refer a customer who seeks to purchase, or seeks an opinion or

1 advice on any insurance product, to a person, or may give the
2 phone number of a person who sells or provides opinions or
3 advice on such products only if the customer expressly requests
4 the referral; the person who engages in loan transactions does
5 not solicit the customer request; and the person who engages in
6 the loan transaction does not receive any compensation for the
7 referral.

8 V. The place of solicitation or sale of insurance by
9 a lending institution to the extent practicable shall be:

10 (1) physically located to be distinct from the
11 banking activities of the institution; and

12 (2) clearly and conspicuously signed to be
13 easily distinguishable by the public as separate and distinct
14 from the banking activities of the institution.

15 W. Signs and other informational material concerning
16 the availability of insurance products from the lending
17 institution or third party soliciting the purchase of or selling
18 insurance on the premises of the lending institution shall not
19 be displayed to the extent practicable in an area where
20 application for loans or other extensions of credit are being
21 taken or closed.

22 X. Nothing in this section grants an institution,
23 including its holding company, subsidiary or affiliate, except
24 those enumerated in this section, the power to sell insurance
25 that was not allowed prior to July 1, 1997.

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Y. Nothing in this section precludes the superintendent from adopting reasonable rules and regulations for the purposes of the administration of the provisions of this section, including rules and regulations for written disclosures. "

Section 2. SEVERABILITY. --If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 3. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 1997.